

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN BROWN,

Petitioner,

v.

CASE NO. 06-cv-11868
HONORABLE VICTORIA A. ROBERTS

ANDREW JACKSON

Respondent.

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ORDER DENYING A CERTIFICATE OF APPEALABILITY

This matter is before the Court because Petitioner filed a notice of appeal of this Court's denial of his motion for relief from judgment filed pursuant to Federal Rule of Civil Procedure 60(b)(6). This arises from the Court's denial of Petitioner's habeas petition in 2009. A certificate of appealability is necessary for a habeas petitioner to appeal the denial of a Rule 60(b) motion. *Johnson v. Bell*, 605 F.3d 333, 336 (6th Cir. 2010).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the court was correct in its procedural

ruling. *Id.* Both showings are required to be made before a certificate of appealability may be issued. *Id.*

Having reviewed the matter, the Court concludes that Petitioner is not entitled to a certificate of appealability from the denial of his motion for relief from judgment because he has failed to demonstrate that jurists of reason would find it debatable that the Court abused its discretion in denying his motion for relief from judgment or that jurists of reason would find it debatable that the underlying petition states a valid claim of the denial of a constitutional right. The Court properly determined that Petitioner's motion was untimely, that Petitioner failed to raise challenges on direct appeal, and that he failed to present exceptional or extraordinary circumstances to set aside this Court's judgment.

Accordingly, the Court **DENIES** a certificate of appealability.

IT IS SO ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: May 7, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record and Steven Brown by electronic means or U.S. Mail on May 7, 2013.

S/Carol A. Pinegar

Deputy Clerk